

1 BILL LOCKYER, Attorney General
of the State of California
2 T. MICHELLE LAIRD, State Bar No. 162979
Deputy Attorney General
3 California Department of Justice
110 West "A" Street, Suite 1100
4 San Diego, CA 92101

5 P.O. Box 85266
San Diego, CA 92186-5266

6 Telephone: (619) 645-2323
7 Facsimile: (619) 645-2061

8 Attorneys for Complainant

9
10 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

13 **PHILIP G. HIRSCH**

14 121 29th Street
15 Newport Beach, CA 92663

16 Certified Public Accountant Certificate No.
17 38582

18 Respondent.

Case No. AC-2004-24

OAH No. L-2005060708

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

19
20 **IT IS HEREBY STIPULATED AND AGREED** by and between the parties to the
21 above-entitled proceedings that the following matters are true:

22 **PARTIES**

23 1. Carol Sigmann (Complainant) is the Executive Officer of the Board of
24 Accountancy. She brought this action solely in her official capacity and is represented in this
25 matter by Bill Lockyer, Attorney General of the State of California, by Karen L. Gordon and T.
26 Michelle Laird, Deputy Attorneys General.

27 ///

28 ///

1 2. Respondent Philip G. Hirsch (Respondent) is representing himself in this
2 proceeding and has chosen not to exercise his right to be represented by counsel.

3 3. On or about September 23, 1983, the Board of Accountancy issued
4 Certified Public Accountant Certificate No. 38582 to Philip G. Hirsch (Respondent). The
5 Certificate was in full force and effect at all times relevant to the charges brought in Accusation
6 No. AC-2004-24 and will expire on December 31, 2006, unless renewed.

7 JURISDICTION

8 4. Accusation No. AC-2004-24 was filed before the Board of Accountancy,
9 and is currently pending against Respondent. The Accusation and all other statutorily required
10 documents were properly served on Respondent on April 15, 2005. Respondent timely filed his
11 Notice of Defense contesting the Accusation. A copy of Accusation No. AC-2004-24 is attached
12 as Exhibit A and incorporated herein by reference.

13 ADVISEMENT AND WAIVERS

14 5. Respondent has carefully read, and understands the charges and allegations
15 in Accusation No. AC-2004-24. Respondent has also carefully read, and understands the effects
16 of this Stipulated Settlement and Disciplinary Order.

17 6. Respondent is fully aware of his legal rights in this matter, including the
18 right to a hearing on the charges and allegations in the Accusation; the right to be represented by
19 counsel at his own expense; the right to confront and cross-examine the witnesses against him;
20 the right to present evidence and to testify on his own behalf; the right to the issuance of
21 subpoenas to compel the attendance of witnesses and the production of documents; the right to
22 reconsideration and court review of an adverse decision; and all other rights accorded by the
23 California Administrative Procedure Act and other applicable laws.

24 7. Respondent voluntarily, knowingly, and intelligently waives and gives up
25 each and every right set forth above.

26 ///

27 ///

28 ///

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in paragraphs 1 through 6 in Accusation No. AC-2004-24. In addition, Respondent:

A. Admits the Charges in the First Cause for Discipline that he is subject to disciplinary action under Section 5100(h) of the Business and Professions Code (hereinafter Code) in that he was denied the right to appear or practice before the United States Securities and Exchange Commission as a result of an order issued by the Securities and Exchange Commission on May 22, 2003 in a case entitled *In the Matter of Philip G. Hirsch*, CPA, Administrative Proceeding File No. 3-11133;

B. Admits the Charges in the Second Cause for Discipline that he is subject to disciplinary action under Section 5100(l) in that he was disciplined by the Securities and Exchange Commission; and,

C. Admits the Charges in the Third Cause for Discipline that he is subject to disciplinary action under Section 5100 in that he violated Section 5063 for failing to notify the Board in writing within 30 days of his being denied the right of appearing or practicing before the Securities and Exchange Commission.

9. Respondent agrees that his Certified Public Accountant Certificate is subject to discipline and he agrees to be bound by the Board of Accountancy's imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

10. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

11. In consideration of the foregoing admissions and stipulations, the parties agree that the Board of Accountancy may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

///

///

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Certified Public Accountant Certificate No. 38582 issued to Respondent Philip G. Hirsch (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

1. **Actual Suspension.** Certified Public Accountant Certificate No. 38582, issued to Philip G. Hirsch, is suspended for three (3) months. During the period of suspension the Respondent shall engage in no activities for which certification as a Certified Public Accountant or Public Accountant is required as described in Business and Professions Code, Division 3, Chapter 1, Section 5051.

2. **Obey All Laws.** Respondent shall obey all Federal, California, other states' and local laws, including those rules relating to the practice of public accountancy in California.

3. **Submit Written Reports.** Respondent shall submit, within ten (10) days of completion of the quarter, written reports to the Board on a form obtained from the Board. The Respondent shall submit, under penalty of perjury, such other written reports, declarations, and verification of actions as are required. These declarations shall contain statements relative to Respondent's compliance with all the terms and conditions of probation. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

4. **Personal Appearances.** Respondent shall, during the period of probation, appear in person at interviews/meetings as directed by the Board or its designated representatives, provided such notification is accomplished in a timely manner.

5. **Comply With Probation.** Respondent shall fully comply with the terms and conditions of the probation imposed by the Board and shall cooperate fully with representatives of the Board of Accountancy in its monitoring and investigation of the Respondent's compliance with probation terms and conditions.

///

1 6. **Practice Investigation.** Respondent shall be subject to, and shall permit,
2 practice investigation of the Respondent's professional practice. Such a practice investigation
3 shall be conducted by representatives of the Board, provided notification of such review is
4 accomplished in a timely manner.

5 7. **Comply With Citations.** Respondent shall comply with all final orders
6 resulting from citations issued by the Board of Accountancy.

7 8. **Tolling of Probation For Out-of-State Residence/Practice.** In the event
8 Respondent should leave California to reside or practice outside this state, Respondent must
9 notify the Board in writing of the dates of departure and return. Periods of non-California
10 residency or practice outside the state shall not apply to reduction of the probationary period, or
11 of any suspension. No obligation imposed herein, including requirements to file written reports,
12 reimburse the Board costs, or make restitution to consumers, shall be suspended or otherwise
13 affected by such periods of out-of-state residency or practice except at the written direction of the
14 Board.

15 9. **Violation of Probation.** If Respondent violates probation in any respect,
16 the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation
17 and carry out the disciplinary order that was stayed. If an accusation or a petition to revoke
18 probation is filed against Respondent during probation, the Board shall have continuing
19 jurisdiction until the matter is final, and the period of probation shall be extended until the matter
20 is final.

21 10. **Completion of Probation.** Upon successful completion of probation,
22 Respondent's license will be fully restored.

23 11. **Cost Reimbursement.** Respondent shall reimburse the Board for its
24 reasonable costs of investigation and prosecution of \$5,000.00. The payment shall be made
25 within 6 months of the date the Board's decision is final.

26 ///

27 ///

28 ///

ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Certified Public Accountant Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Accountancy.

DATED: 12/13/05



PHILIP G. MIRSCH
Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Accountancy.

DATED: 1/3/06

BILL LOCKYER, Attorney General
of the State of California



T. MICHELLE LAIRD
Deputy Attorney General

Attorneys for Complainant

**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

PHILIP G. HIRSCH

121 29th Street
Newport Beach, CA 92663

Certified Public Accountant Certificate No.
38582

Respondent.

Case No. AC-2004-24

OAH No. L-2005060708

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Accountancy as its Decision in this matter.

This Decision shall become effective on February 24, 2006.

It is so ORDERED January 25, 2006

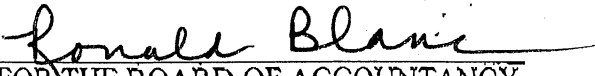

FOR THE BOARD OF ACCOUNTANCY

Exhibit A

Accusation No. AC-2004-24

1 BILL LOCKYER, Attorney General
of the State of California
2 KAREN L. GORDON, State Bar No. 137969
Deputy Attorney General
3 California Department of Justice
110 West "A" Street, Suite 1100
4 San Diego, CA 92101
5 P.O. Box 85266
San Diego, CA 92186-5266
6 Telephone: (619) 645-2073
Facsimile: (619) 645-2061
7
8 Attorneys for Complainant

9
10 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. AC-2004-24

13 PHILIP G. HIRSCH
121 29th Street
14 Newport Beach, CA 92663

A C C U S A T I O N

15 Certified Public Accountant Certificate
No. 38582

16
17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

21 1. Carol Sigmann (Complainant) brings this Accusation solely in her official
22 capacity as the Executive Officer of the California Board of Accountancy, Department of
23 Consumer Affairs.

24 2. On or about September 23, 1983, the California Board of Accountancy
25 issued Certified Public Accountant Certificate Number 38582 to Philip G. Hirsch (Respondent).
26 The Certified Public Accountant's Certificate was in full force and effect at all times relevant to
27 the charges brought herein and will expire on December 31, 2006, unless renewed.

28 ///

JURISDICTION

3. This Accusation is brought before the California Board of Accountancy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 5100 of the California Business and Professions Code (hereinafter Code) provides, in pertinent part, that after notice and hearing the Board may revoke, suspend, or refuse to renew any permit or certificate for unprofessional conduct, which includes, but is not limited to, one or any combination of the following:

(h) Suspension or revocation of the right to practice before any governmental body or agency;

(l) The imposition of any discipline, penalty, or sanction on a registered public accounting firm or any associated person of such firm, or both, or on any other holder of a permit, certificate, license, or other authority to practice in this state, by the Public Company Accounting Oversight Board or the United States Securities and Exchange Commission, or their designees.

5. Section 5063(a) of the Code states, in pertinent part, that a licensee shall report to the Board in writing of the occurrence of any of the following events occurring on or after January 1, 1997, within 30 days of the date the licensee has knowledge of these events:

(3) The cancellation, revocation, or suspension of the right to practice as a certified public accountant or a public accountant before any governmental body or agency.

6. Section 5107 of the Code states:

"(a) The executive officer of the board may request the administrative law judge, as part of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate found to have committed a violation or violations of this chapter to pay to the board all reasonable costs of investigation and prosecution of the case, including, but not limited to, attorneys' fees. The board shall not recover costs incurred at the administrative hearing.

(b) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the executive officer, shall be prima facie evidence of reasonable costs of investigation and prosecution of the case."

FIRST CAUSE FOR DISCIPLINE

(Suspension by Governmental Agency)

7. Respondent is subject to disciplinary action under Code Section 5100(h) in that Respondent has been denied the right to practice or appear before the United States Securities and Exchange Commission. The circumstances are as follows:

A. On May 22, 2003, in a case entitled *In the Matter of Philip G. Hirsch, CPA, Administrative Proceeding File No. 3-11133*, the Securities and Exchange Commission ("Commission") issued an Order Instituting Public Administrative Proceedings Pursuant to Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions ("Order").¹ Pursuant to the Order, Respondent was denied the privilege of appearing or practicing before the Commission as an accountant. After one year, Respondent may request that the Commission consider his reinstatement subject to certain conditions. The Order was based upon the following action:

The Securities and Exchange Commission in its order found that Respondent failed to comply with Generally Accepted Auditing Standards (GAAS) in the conduct of SmarTalk's 1997 audit. Specifically, Respondent failed to adequately test management's commitment to a detailed exit plan prior to year-end 1997. Respondent failed to adequately audit the reserve for contract termination fees. Respondent failed to adequately audit the reserve for inventory write-downs. Respondent failed to adequately audit the reserve for asset write-downs associated with offices purportedly to be closed in 1998. Respondent failed to adequately audit the reserve for severance benefits. Respondent failed to adequately audit SmarTalk's

1. Rule 102(e)(1)(ii) provides, in relevant part, that:

The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . any person who is found . . . to have engaged in improper professional conduct.

1 establishment of general reserves. Respondent failed to adequately audit the improper charging
2 of 1997 operating expenses against the restructuring reserve.

3 The order also stated that Respondent engaged in improper professional conduct
4 within the meaning of Commission Rule of Practice 102(e) by failing to maintain an attitude of
5 professional skepticism, failing to obtain sufficient competent evidential matter, failing to
6 exercise due professional care, and failing to render an accurate audit report.

7 **SECOND CAUSE FOR DISCIPLINE**

8 (Discipline by the U.S. Securities and Exchange Commission)

9 8. Respondent is subject to disciplinary action under Code Section 5100(l) in
10 that Respondent has been disciplined by the United States Securities and Exchange Commission,
11 as more fully set forth in paragraph 7 (A).

12 **THIRD CAUSE FOR DISCIPLINE**

13 (Failure to Report Suspension of the Right to Practice
14 Before the U.S. Securities and Exchange Commission)

15 9. Respondent is subject to disciplinary action under Business and
16 Professions Code section 5100 in that Respondent violated Code section 5063 for failing to
17 notify the Board in writing within 30 days of his being denied the privilege of appearing or
18 practicing before the Securities and Exchange Commission as an accountant.

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

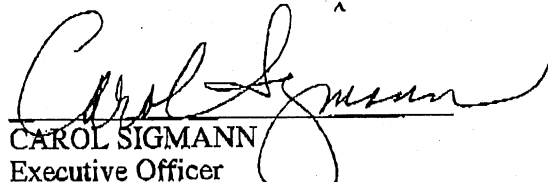
28 ///

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the California Board of Accountancy issue a decision:

1. Revoking or suspending or otherwise imposing discipline upon Certified Public Accountant Number 38582, issued to Philip G. Hirsch;
2. Ordering Philip G. Hirsch to pay the Board of Accountancy's costs in the investigation and enforcement of the case according to proof at the hearing, pursuant to Business and Professions Code section 5107; and
3. Taking such other and further action as deemed necessary and proper.

DATED: April 4, 2005


CAROL SIGMANN
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant

20048002-66
70015368.wpd